
Disabled people**The Mental Capacity Act**

The Mental Capacity Act came fully into force on 1 October 2007. It aims to protect people who cannot make decisions for themselves due to a learning disability or a mental health condition, for example Alzheimer's disease, or for any other reason. It provides clear guidelines for carers and professionals about who can take decisions in which situations.

The capacity to make decisions

The Act states that everyone should be treated as able to make their own decisions until it is shown that they can't. It also aims to enable people to make their own decisions for as long as they are capable of doing so.

A person's capacity to make a decision will be established at the time that a decision needs to be made. A lack of capacity could be because of a severe learning disability, dementia, mental health problems, a brain injury, a stroke or unconsciousness due to an anaesthetic or a sudden accident.

It also makes it a criminal offence of neglect or ill-treatment of a person who lacks capacity.

When someone is no longer able to decide

The Act intends to protect people who lose the capacity to make their own decisions. It will:

- allow the person, while they are still able, to appoint someone (for example a trusted relative or friend) to make decisions on their behalf once they lose the ability to do so. This will mean they can make decisions on the person's health and personal welfare. Previously, the law only covered financial matters.
- ensure that decisions that are made on the person's behalf are in their best interests. The Act provides a checklist of things that decision makers must work through.
- introduce a Code of Practice for people such as healthcare workers who support people who have lost the capacity to make their own decisions.

People with no one to act for them will also be able to leave instructions for their care under the new provisions.

You can read more about the Act on the website of the Office of the Public Guardian.

[Mental Capacity Act - Office of the Public Guardian website](#)

The Office of the Public Guardian

The Office of the Public Guardian (OPG) protects people who lack the mental capacity to make decisions for themselves.

It does this through regulating and supervising court-appointed deputies, and by registering Lasting Powers of Attorney (LPA) and Enduring Powers of Attorney (EPA).

In some cases, where there are suspicions that an attorney or deputy might not be acting in the best interests of the person they represent, the OPG will work with other organisations to ensure that any allegations of abuse are fully investigated and acted on.

The OPG also provides information on mental capacity to the public and can provide contacts with other organisations working in the field of mental capacity. More information about the Office of the Public Guardian, the Court of Protection and Lasting Powers of Attorney can be found on the Office of the Public Guardian website.

[The Office of the Public Guardian website](#)

The Court of Protection

The Court of Protection deals with all issues relating to people who lack capacity to make specific decisions, for example concerning financial or serious healthcare matters. It will look at cases where the person's carer and healthcare worker or social worker disagree on what are the person's best interests.

The Court of Protection has specially trained judges to deal with decisions relating to personal welfare, as well as property and financial affairs.

[Court of Protection - Office of the Public Guardian website](#)

Lasting Powers of Attorney

Lasting Powers of Attorney (LPAs) replace Enduring Powers of Attorney (EPAs). LPAs will give vulnerable people greater choice and control over their future and enable people to choose someone they trust to look after their affairs if necessary.

The new LPAs cover personal welfare as well as finance and property decisions. As they can only be used after they have been registered with the Public Guardian, they will be under more scrutiny and ensure that any decisions made on behalf of people lacking capacity are in their best interests.

[Managing your affairs and lasting power of attorney \(over 50s section\)](#)

Independent Mental Capacity Advocate

The Mental Capacity Act set up the Independent Mental Capacity Advocate (IMCA) service. The service helps vulnerable people who cannot make some or all important decisions about their lives.

The IMCA service will mean that certain people who lack capacity - this may include people with dementia, Alzheimer's disease, brain injury or a very severe learning disability - will be helped to make difficult decisions such as medical treatment choices or where they live. It is aimed at people who do not have relatives or friends to speak for them.

Three Stories - a film about the Mental Capacity Act

'Three Stories' is a powerful documentary about three real-life stories. It shows how the Mental Capacity Act empowers and protects people who lack capacity to make some decisions or who find it difficult to communicate some of their decisions.

The 15-minute-long film is available in three formats:

- Windows Media video - the WMV file
- QuickTime - the MOV file
- Real Player video - the RMVB file

[Download Mental Capacity Act video \(WMV, 27342K\)](#)

[Download Mental Capacity Act video \(MOV, 22919K\)](#)

[Download Mental Capacity Act video \(RMVB, 30362K\)](#)

In this section...

[The Mental Health Act](#)

[Rights of access to health and social care](#)